



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

SHEILA A. ALLES
INTERIM STATE SUPERINTENDENT

January 18, 2019

Peter Webster
Aimee Gibbs
Aaron Burrell
Dickinson Wright PLLC
2600 W. Big Beaver Rd, Suite 300
Troy, MI 48084

Re: Detroit Community Schools CP 16-1-R

Dear Mr. Webster, Ms. Gibbs, Mr. Burrell:

Enclosed is a copy of my Final Report and Decision denying the request for reconsideration of the state aid penalty levied against Detroit Community Schools in the matter of *Detroit Community Schools* CP 16-1, issued April 14, 2017.

Sincerely,

Sheila A. Alles
Interim State Superintendent

cc: Phil Boone, Office of Financial Management - State Aid and School Finance
Leah Breen, Director, Office of Educator Excellence

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Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Detroit Community Schools
Request for Reconsideration
Certification Penalty Docket No. CP 16-1-R

BACKGROUND FACTS

Detroit Community Schools is a public school academy authorized by the Bay Mills Community College Board of Trustees (Bay Mills). On April 14, 2017, the Superintendent of Public Instruction issued a final decision and order in *Detroit Community Schools* (CP 16-1), affirming the assessment of a penalty against Detroit Community Schools by the Michigan Department of Education (Department) under section 163 of the State School Aid Act, MCL 388.1763. The assessment was based on Detroit Community Schools' employment of Sharon McPhail as a superintendent despite her failure to hold a valid Michigan school administrator certificate as required by section 1246(1)(b) of the Revised School Code, MCL 380.1246(1)(b).¹ As required by MCL 388.1763, the penalty assessed at the time of the Superintendent's decision was the amount paid to Ms. McPhail by Detroit Community Schools from October 1, 2015, until the termination of her illegal employment.

As of April 14, 2017, the date of the Superintendent's decision, the amount assessed against Detroit Community Schools was \$205,833.27. Under MCL

¹ The Superintendent of Public Instruction also found that Ms. McPhail was required to hold a school administrator certificate pursuant to MCL 380.1246(1)(b) because she had primary responsibility for the administration of instructional programs. *Detroit Community Schools, supra* at n 13.

388.1615(2), the Department granted a multi-year extension for repayment of that amount.

As ordered by the Superintendent in his April 14, 2017 decision, the Department assessed an additional amount against Detroit Community Schools for each month that it continued to employ Ms. McPhail as a superintendent despite her lack of the required school administrator certificate. Thus, through July 2017, the Department assessed an additional amount against Detroit Community Schools of \$16,742.42. That additional amount, which was not subject to the extended payment plan, was withheld in its entirety from Detroit Community Schools' state aid payments for the April to July 2017 period.

During the summer of 2017, Detroit Community Schools informed the Department that, effective August 1, 2017, Ms. McPhail was no longer employed in a position that required school administrator certification. Based on that information, as of August 1, 2017, the Department ceased the additional periodic deductions for the ongoing infraction of the illegal employment of Ms. McPhail. Detroit Community Schools' liability for the previously assessed amount that was being recaptured pursuant to the Department's agreement to extend the repayment period under MCL 388.1615(2) was not affected by the August 2017 cessation of the ongoing assessments.

On October 5, 2018, based in part on Detroit Community Schools' continued employment of Ms. McPhail without the required school administrator certificate, Bay Mills appointed a conservator who assumed all express and implied authority of the public school academy's board of directors, including the authority to hire and

discharge employees.² On October 8, 2018, the conservator discharged Ms. McPhail.³ On October 29, 2018, the conservator hired a superintendent who holds a valid Michigan school administrator certificate.⁴

On December 5, 2018, Detroit Community Schools, through the conservator, filed the instant "request for reconsideration of state aid deduction." The request is limited to a request for reconsideration of the remaining balance of the assessment under MCL 388.1763 that was based on the amount paid by Detroit Community Schools to Ms. McPhail for the period of October 1, 2015, to April 14, 2017. As noted above, that assessment is being withheld from Detroit Community Schools' state aid payments in installments under the MCL 388.1615(2) extended-payment plan. The request for reconsideration specifically asks for reversal of the balance due as of October 2018.⁵

Acting as designee of the Superintendent of Public Instruction, Robert Taylor offered Detroit Community Schools the option to submit its request entirely in

² Exhibit 3. (Detroit Community Schools submitted the exhibits to the Department with its December 5, 2018 request for reconsideration.)

³ Exhibit 4.

⁴ Exhibit 7.

⁵ In the summer of 2018, the Department determined that Detroit Community Schools' assertion the previous summer about Ms. McPhail's status effective August 1, 2017, was not accurate. (Exhibit 9, Tab 17, July 16, 2018 letter from Leah C. Breen, director of the Department's Office of Educator Excellence, to Detroit Community Schools). In a letter dated August 30, 2018, Ms. Breen informed Detroit Community Schools that the Department was going to reinstate the assessment under MCL 388.1763 based on the amount the district paid to Ms. McPhail after August 1, 2017, and she gave the district 60 days to submit evidence of that amount. (Exhibit 9, Tab 21). Detroit Community Schools has not provided the requested evidence, although Ms. McPhail herself submitted a document to the Department on October 1, 2018, that included a statement that her salary was \$130,000. The determination of the additional assessment required by MCL 388.1763 based on Detroit Community Schools' employment of Ms. McPhail from August 1, 2017, to October 8, 2018, is pending.

writing or to attend an in-person review conference during which Detroit Community Schools could present its position and the Department could respond. Detroit Community Schools chose to present its request entirely in writing.

DISCUSSION

MCL 380.1246 provides in part as follows.

(1) A school district, public school academy, or intermediate school district shall not continue to employ a person as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs or as a chief business official unless the person meets 1 or more of the following requirements, as applicable:

(b) Subject to subsection (3), for a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs and who is initially employed as a school administrator in this state after [January 4, 2010], possesses a valid Michigan school administrator's certificate issued under section 1536.

(3) A school district, public school academy, or intermediate school district may employ as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs a person who is enrolled in a program leading to certification as a school administrator under section 1536 not later than 6 months after he or she begins the employment. A person employed as a school administrator pursuant to this subsection has 3 years to meet the certification requirements of section 1536, or the school district, public school academy, or intermediate school district shall not continue to employ the person as a school administrator described in this subsection.

MCL 388.1763(2) provides in part as follows.

(1) Except as provided in the revised school code, the board of a district [6] or intermediate district shall not permit any of the following:

(c) An individual who does not satisfy the requirements of section 1246 of the revised school code, MCL 380.1246, or who is not working under a valid substitute permit issued under rules promulgated by the department, to be employed as a superintendent, principal, or assistant principal, or as an individual whose primary responsibility is to administer instructional programs in an elementary or secondary school, or in a district or intermediate district.

(2) Except as provided in the revised school code, a district or intermediate district employing individuals in violation of this section shall have deducted the sum equal to the amount paid the individuals for the period of employment.

In its request for reconsideration, Detroit Community Schools does not argue that Sharon McPhail was not employed as a superintendent during the period in question. Nor does Detroit Community Schools argue that Ms. McPhail held a valid school administrator certificate at any time or that she was for any reason exempt from the statutory school administrator certification requirement.⁷

Detroit Community Schools cites no authority that supports its suggestion that I may reconsider the April 14, 2017 final decision and order at this time. On

⁶ "District" includes a public school academy. MCL 388.1603(9).

⁷ Detroit Community Schools has admitted that Ms. McPhail was required to hold school administrator certification. See, e.g., Plaintiff's emergency motion (and supporting brief) for temporary restraining order and preliminary injunction, Docket No. 18-013231-CZ, Wayne County Circuit Court (Exhibit 6); and Corrective Action Plan signed by Detroit Community Schools Chief Financial Officer William Coleman, attached to financial statements dated June 30, 2018 (Exhibit 12). See also Plan of Correction dated October 31, 2018 (Exhibit 8); and Notice of Intent to Revoke Contract dated September 25, 2018 (Exhibit 9).

As noted in the April 14, 2017 decision, MCL 380.1246(3) does not apply to Detroit Community Schools' employment of Ms. McPhail as she did not enroll in a school administrator preparation program within six months of the start of her employment by Detroit Community Schools in a position that required school administrator certification.

the contrary, as an agency final decision and order, the April 14, 2017 decision and order were appealable to the circuit court under the rules of the Michigan Supreme Court. MCL 600.631; MCR 7.701 et seq. Detroit Community Schools did not appeal the April 14, 2017 decision and order to circuit court and the instant request for reconsideration was filed well beyond the 21-day appeal period. I therefore find that I have no authority to entertain this request and, for that reason, I deny it. I will nonetheless briefly address the arguments made by Detroit Community Schools in support of its request for reconsideration.

Detroit Community Schools argues that *Bangor Public Schools* (CP 17-4) supports its request for reconsideration. In that case, the Superintendent of Public Instruction found that Bangor Public Schools did not employ the individual in question in a position for which school administrator certification was statutorily required. Detroit Community Schools has admitted that Ms. McPhail required school administrator certification. Thus, even if I had authority to consider the instant request, the *Bangor* decision would provide no relevant guidance.

In further support of its request for reconsideration, Detroit Community Schools cites *Detroit Public Schools Community District* (CP 18-7). That case involved a penalty assessed against Detroit Public Schools Community District based on its employment of an administrator who had completed a school administrator preparation program in Florida and who held a Florida school administrator certificate at the time in question. In support of my finding that the assessment was unjust and unreasonable in that case, I noted the statutory protection afforded to school districts who employ uncertified school administrators

for six months (and, in some cases, three years) under MCL 380.1246(3).

Contrasting that protection with the assessment under review, I found:

[I]t is unjust to afford protection under MCL 380.1246(3) to individuals who have never been certified while at the same time denying any similar protection to individuals who hold out-of-state certification and who are not required to complete any further professional preparation to qualify for Michigan certification.

In this case, it is not disputed that Ms. McPhail never completed a school administrator preparation program or held a valid school administrator certificate. Thus, even if I had authority to consider the instant request, the *Detroit Public Schools Community District* decision would not support Detroit Community Schools' position.

Detroit Community Schools argues that the "unique and unprecedented" facts of this case support its request for reconsideration. I commend Bay Mills Community College for the appointment of a conservator and I commend the conservator for immediately ensuring that a properly certified superintendent was in place. In addition, I fully concur in the conservator's commitment to providing a quality program that benefits pupils. However, I am not persuaded that the facts would support deviation from MCL 388.1763, the clear language of which, as interpreted by the Court of Appeals in *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644 (1988), compels the Department to assess a penalty when uncertified educators are illegally employed.

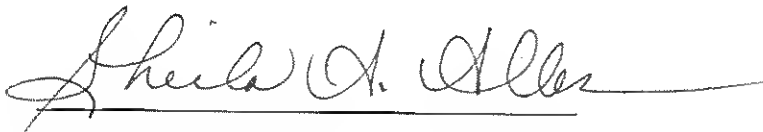
Detroit Community Schools further argues that, at a minimum, the Department should reduce the amount of the assessment. In support of this argument, Detroit Community Schools cites appellate court decisions in cases

involving the discipline of tenured teachers. Those decisions involved statutory provisions and judicial precedent about the authority of the State Tenure Commission that have no relevance to this matter.

In summary, I find that I have no authority to consider Detroit Community Schools' request for reconsideration of the April 14, 2017 final decision and order. For that reason, I deny the request.

ORDER

Based on my review of this matter and for the above reasons, I deny Detroit Community Schools' request for reconsideration of the April 14, 2017 final decision and order that affirmed the state aid assessment against Detroit Community Schools under section 163 of the State School Aid Act, MCL 388.1763, in the amount of salary paid to Sharon McPhail during the period of October 1, 2015, to April 14, 2017. This order does not preclude an additional assessment under MCL 388.1763 based on Detroit Community Schools' employment of Sharon McPhail during the period of August 1, 2017, to October 8, 2018.

A handwritten signature in black ink, reading "Sheila A. Alles", with a horizontal line underneath.

Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: January 18, 2019